

INDIAN TRUST FUNDS 1995

Y 4. IN 2/11: S. HRG. 104-
514/PT. 2

Indian Trust Funds 1995, S. Hrg. 10...

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

OVERSIGHT HEARING ON THE BIA MISMANAGEMENT OF FUNDS HELD
IN TRUST FOR NATIVE AMERICANS

JUNE 11, 1996
WASHINGTON, DC

PART 2

ADDENDUM



SUPERINTENDENT OF DOCUMENTS
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ADDENDUM

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS,
Washington, DC, September 26, 1996.

Hon. JOHN MCCAIN,
Chairman, Senate Committee on Indian Affairs,
Washington, DC.

DEAR MR. CHAIRMAN: Enclosed are the Department's Responses to Supplemental Questions posed by your Committee following the June 11, 1996 oversight hearing on Indian trust funds management. The questions answered in this package are numbers 1, 3, 4, 5, 8, 9, 10, 11, and 15. The remaining questions will be answered under separate cover shortly.

Sincerely,

PAUL M. HOMAN,
Special Trustee for American Indians.

RESPONSES TO SUPPLEMENTAL QUESTIONS BY THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS TO THE SPECIAL TRUSTEE FOLLOWING THE JUNE 11, 1996 OVERSIGHT HEARING ON INDIAN TRUST FUNDS MANAGEMENT BY THE BUREAU OF INDIAN AFFAIRS AND IMPLEMENTATION OF THE AMERICAN INDIAN TRUST MANAGEMENT REFORM ACT OF 1994

Question 1. Why did the Secretary's May 31, 1996 report to Congress fail to include a proposed "balance reconciled as of September 30, 1995" for the trust account of each tribe as required by Section 304 of the 1994 Reform Act?

Answer. As the Secretary's Report indicates, the report is an interim report pending meeting with all tribes to explain and clarify any questions the tribes may have about the reports. Through April 30, 1996, seventy-seven of the 280 tribes involved in the reconciliation project have responded. Specifically, two account holders have accepted and three have disputed their account balances. Two others, through their lawyers, have disputed their account balances. The rest of the account holders have not specifically accepted or disputed their account balances and many have requested time and/or a meeting. Once all meetings have been held and input received, a final report will be sent to Congress on or before November 16, 1996 that will provide the additional information requested under Section 304 of the 1994 Reform Act.

Question 3. I appreciate your caution on how the \$2.4 billion in unreconciled tribal trust funds has been reported by the news media. But would not a trustee in the private sector be held financially liable if it failed to produce back-up documentation to reconcile \$2.4 billion, a full 14% of the transactions it handled in a trust account?

Answer. The failure to document trust transactions would not, in and of itself, create financial liability on the part of a private trustee. Rather, if a private trustee failed in its duty to account for records properly, and if that failure led directly to an identifiable financial loss on the part of the beneficiary, the private trustee might be legally responsible for the loss.

Question 4. In your judgment does the \$21 million reconciliation effort performed by Arthur Andersen Company provide tribes with the "fair and complete accounting" required by the 1994 Reform Act?

(A) If your answer is yes, then explain how you have come to that conclusion when Arthur Andersen has fully disclaimed the accuracy of its results in the context of generally accepted auditing standards?

(B) If your answer is no, please explain what else has to be done in order to discharge your duty under the 1994 Act to provide tribes with a "fair and complete accounting" of their funds?

Answer. The 1994 Reform Act requires the Special Trustee to monitor the reconciliation of tribal and Individual Indian Money trust accounts to ensure that the Bureau provides the account holders with a "fair and accurate" accounting of all trust accounts. As the Secretary's Report indicates, the methodology used to reconcile the Tribal trust fund accounts consisted of agreed-upon procedures applied to specific elements, accounts or items of a financial statement. The performance of the work and the reporting of the findings were governed by the Statement of Auditing Standards 35 issued by the Auditing Standards Board, American Institute of Certified Public Accountants. The work performed, however, is not an audit as defined by the American Institute of Certified Public Accountants and is not a fair and complete accounting because all the necessary financial records require to perform an audit could not be located. Consequently, the conclusions that can be drawn from the results can only be related to the records reviewed and cannot be applied to any unreconciled transaction.

The Office of Special Trustee is continuing to collect responses from account holders regarding their acceptance or dispute of their account balances. To date, only a few account holders have responded. OST also will complete the remaining regional meetings. At these meetings, OST staff will work directly with account holders to discuss any questions or issues they have with respect to their specific reconciliation reports and account statements. Once the remaining scheduled meetings have been held and account holders have had an opportunity to fully review their statements and communicate their acceptance or dispute of the account balances, the Department will submit a final report on account holder attestations to Congress. A strategy for resolving disputes will be further developed at that time.

In February 1996 the Office of Special Trustee completed a preliminary assessment and produced a conceptual strategic plan to acquire and institutionalize specified systems. Implementation of this plan will permit and ensure that the U.S. Government establishes appropriate policies and procedures, develops necessary systems and takes the affirmative actions necessary to provide an accurate and timely accounting and a "fair and complete accounting" to American Indian trust beneficiaries. In this manner the proper discharge of the Secretary of the Interior's trust responsibilities finally can be accomplished.

While significant improvements have been made over the last several years, the undeniably poor quality of the trust management systems, the condition of the historical records and the U.S. Government's inability to provide an accurate and timely accounting are not acceptable and cannot be remedied without the major reforms required by the Reform Act of 1994. To address these issues, the Special Trustee's conceptual strategic plan identified nine initiatives or principles designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. This, at a minimum, will involve acquiring, updating, integrating, coordinating and consolidating to produce:

1. A trust resource/asset management delivery system.—This will involve obtaining a new trust resource/asset management and delivery system for asset leasing, contracting, lending, buying and selling, together with standardized and/or integrated asset management, credit and operating policies, procedures and practices. The system must be able to tie and track from land and ownership records.

2. An accounts receivable data and billing system that uses lease-contract and land ownership information.—This will involve obtaining a new accounts receivable, billing and collection data system that uses lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.

3. A trust, depository, payments and delivery systems for IIM accounts.—This will entail purchasing a trust, depository, payments and other financial services accounting and statement system and a delivery system to more efficiently provide current financial services and to facilitate new and improved financial services to individual Indians and tribes.

4. A land records and title recordation and certification system.—This will involve acquiring a new land records and title recordation and certification system, capable of instantaneous linkage with the trust resource asset management, accounts receivable and trust accounting systems.

5. A general ledger and general accounting system.—This will involve obtaining or modifying a general ledger and general accounting system to accommodate all present and planned systems and accounting improvements.

6. A technology services center dedicated to trust resource and funds management.—This will involve obtaining a centralized technology services center dedi-

cated to trust resources, trust funds and land ownership and records management processes.

7. A national archives and records center.—This will involve obtaining and centralizing a modern national archives and records center for trust resource, asset and funds record storage and retrieval.

8. A risk management and control system.—This will entail obtaining a risk management and control system that will provide for adequate operational audits, credit and asset quality audits, compliance reviews, independent asset appraisals and liaison with outside, independent auditors.

9. An independent institutional structure.—This will involve consolidating trust resource, trust funds and land ownership and records management processes into a single, independent institutional unit with its own management structure to accommodate the restructuring and reorganization contemplated by Phase I of the strategic plan. The unit should be organized by function and dedicated exclusively to trust management. The unit should have agency or bureau status within the Department of the Interior or elsewhere as determined by Congress.

Question 5. Despite a previous commitment made by the Department that it would develop a legislated settlement proposal on the tribal trust funds to accompany the Secretary's May 31, 1996 report, none was provided. Has the Department developed a settlement proposal? How does it differ from that proposed by GAO?

Answer. Subsection 3 of Section 304 of the Act requires "a statement by the Secretary with regard to each account balance disputed by the account holder outlining efforts the Secretary will undertake to resolve the dispute." As noted, through April 30, 1996, five (5) account holders have disputed the balance of their accounts. Until the regional meetings planned for this summer are completed and the tribes have had an opportunity to analyze the reports and documentation they have been provided, the Department will not know how many tribes will dispute the balance of their accounts. At that time, the Department will be in a position to propose a mechanism to resolve any such disputes. For these reasons the Department has not developed a settlement proposal to date.

Question 8. I note that the President's budget request for fiscal year 1997 seeks \$1 million to validate the cost estimates you have already obtained to implement your strategic plan for improvements. Given the substantial liabilities which continue to accumulate against the United States, how can we afford to wait until fiscal year 1997 to merely study what is needed to be done? How much did the Department pay for the cost estimate you obtained? Why has it been deemed inadequate?

Answer. The government should not wait until fiscal year 1997 to merely study what is needed to be done and should proceed with implementing the strategic plan. The \$1 million requested will do more than simply validate cost estimates.

The conceptual work on the strategic plan is completed. The next step is a requirements analysis, a user needs assessment and a comprehensive inventory of existing skills, hardware and software, related network support and facilities requirements, all of which will lead to a technical requirements report for RFP purposes and confirm or revise the cost data contained in the conceptual strategic plan. This will require the use of an outside contractor. The cost of implementation has been reasonably estimated in a preliminary study by an independent contractor as has been noted above. That study cost about \$50,000. The user needs survey and further staff analysis will confirm or revise these preliminary estimates. Because most of the cost is driven by an estimated 1,236 new PC workstations and upgrading 824 existing workstations identified in the preliminary study and because these estimates are already reasonably reliable, final cost numbers are not expected to differ significantly from the preliminary estimates. Therefore, implementation of improvements in the core trust management systems can and should proceed as soon as funding can be secured. Out of an abundance of caution, however, the user needs survey and inventory must be completed before the cost estimates can be completely validated and the comprehensive strategic plan completed.

Question 9. How will implementation of proposed reform efforts be impacted by the cut in FY 97 funding level for the Office of Special Trustee proposed by the House Subcommittee on Interior Appropriations?

Answer. At the House Subcommittee mark, no funds would be available for OST to progress on research to clear past problems or implement improvement initiatives or implement the conceptual strategic plan or complete the comprehensive strategic plan. Essentially, the House mark funds the Immediate Office of the Special Trustee at the FY 1996 level of \$526,000, rather than the \$1,228,000 requested in the President's budget. This is a funding and staffing level inadequate to complete or implement the conceptual strategic plan. The House mark also estimated \$13.6 million allocated by the President's budget to implement the strategic plan. The rec-

ommendations of the House subcommittee on Interior for the 1997 Budget Request for the Office of Special Trustee were agreed to by the full committee and passed by the House of Representatives on June 20, 1996. The effect of the House action was detailed in effects statements provided to the House and Senate Interior Appropriations Committees. These effect statements, prepared by our budget office, are attached.

DEPARTMENT OF THE INTERIOR

Fiscal Year 1997 Interior Appropriations Bill; Effect of House Action

Bureau / Office: Office of the Special Trustee for American Indians

Appropriation: Federal Trust Programs, 14X0120

Activity / Subactivity: Program Operations, Support, and Improvements

Project / Budget Element: N/A

[Dollars in thousands]

Item	Fiscal year 1996 enacted	Fiscal year 1997		
		President's request	House level	House change (+/-) from President's request
Program operations, support and improvements	15,562	¹ 31,788	¹ 16,562	¹ -15,226

¹ Excludes amounts requested and provided for administrative support costs, which are reported in a separate effect statement.

House Action: The House provided \$1,000,000 over the FY 1996 enacted level to conduct a requirements analysis and user needs assessment. The House funding level is \$15 million below the President's Budget Request for these activities.

House Report Statement: "The Committee has provided \$1,000,000 to conduct a requirements analysis and user needs assessment which is necessary to complete the Special Trustee's comprehensive strategic plan. The Special Trustee should ensure that this analysis is conducted in the most economical manner. To the extent that the cost of the analysis is less than the resources provided, any remaining funds can be allocated to other high-priority needs. Upon completion of the strategic plan, if the Administration believes there is a compelling need for additional resources, the Committee would consider a request for a supplemental appropriation."

Reference: Page 54 of the Subcommittee Report, House Report 104—

Effect of House action

Facts, Circumstances and Considerations: Due to the availability in FY 1996 of \$2.3 million in FY 1995 unobligated balances, the funding level provided by the House represents a programmatic reduction. The Congress had reduced funding in 1996 to reflect the availability of unobligated balances. No substantial carryover balances are projected to be available in 1997. At the House funding level, the Office of the Special Trustee cannot maintain activities at the same level as in FY 1996 but must eliminate some currently ongoing program activities. The effective programmatic reduction to ongoing activities is about 15%.

In addition, at the House level, no funds would be available to initiate new critical improvement efforts necessary to reform the Department's management of Indian trust funds. Primarily, the increased resources requested in the President's Budget were proposed to be used to correct Individual Indian Money account management systems deficiencies that are in urgent need of repair.

Furthermore, there is a possibility that the OST appropriation will have to fund court-ordered litigation support costs (document collection and accountings) in lawsuits that have been filed against the U.S. Government over the Department's management of Indian Trust funds. There are currently no funds budgeted for these purposes, and the amounts could be substantial.

Effect of the Change upon the Objects, Purposes, and Programs for which it is provided: The reduction of \$15,226,000 (excluding administrative costs addressed in a separate effect statement) from the President's Budget will require that the Office of the Special Trustee absorb all uncontrollable cost increases and will mandate the elimination of the following ongoing and proposed improvement initiatives:

Reduction or elimination of ongoing improvement initiatives (-\$815,000)

IIM Clean up (-\$400,000).—Critical IIM Cleanup efforts would be eliminated in 1997 at the House funding level. Numerous problems and issues concerning IIM accounting have been researched, reported on, and discussed in several internal and

external reports. There are over 387,000 IIM accounts totalling \$450 million and some of the problems associated with these accounts are: twelve different non-integrated data bases; over 15,000 duplicate accounts; over 50,000 accounts have incorrect or missing addresses; over 15,000 accounts are erroneously classified as accounts for minors; approximately 22% of the special deposit accounts have had no activity in the last 18 months; about 21,000 accounts for deceased individuals; approximately 37% of the accounts have balances less than \$1.00; and 35,000 accounts have had no activity in the last 18 months.

Custodian Contract (-\$400,000).—In FY 1996, OST is contracting for centralized custodial services. This will allow for the timely settlement of trades, timely collection of funds to enable immediate investment, and automated reconciliation of a large number of diverse investment products. Centralized services replace the numerous custodians used for the safekeeping of investment securities and certificates of deposit, including the U.S. Treasury, the Federal Reserve Bank of New York, several brokerage firms, and many commercial banks. This contract will have to be terminated in FY 1997 at the House funding level.

Annual Lease Trust System (-\$15,000).—This funding supports the annual contract with SunGard Asset Management Systems for the Omni Trust System. OTFM converted to the system in March of 1995, bringing on-line a system that meets industry standards. In FY 1997 increased funding was proposed to obtain additional options to enable interface with the centralized custodian, upgraded account statements, improved accrual calculations, and evaluation tools to measure investment security performance. These additional options were in response to customer input, as well as in response to audit findings. These additional improvements will have to be eliminated in FY 1997 at the House funding level.

Elimination of proposed improvement initiatives (-\$14,411,000)

Investment Advisory Services (-\$600,000).—Funds were requested to be used to secure investment advisory services in order to more effectively meet the Secretary's fiduciary responsibility to maximize the return on investment of all trust monies held on behalf of Indian tribes and individuals. OST planned to contract with professional investment advisors who could analyze current portfolios and make recommendations; and execute trades based on their access to vast databases that provide forecasting, research, and analytical resources. OST would retain ultimate decision-making responsibility. This proposed improvement will have to be eliminated in FY 1997 at the House funding level.

Document Imaging (-\$100,000).—Funds were requested for the acquisition of document imaging equipment in field locations necessary to automate the currently labor intensive hard copy process and to create an audit trail necessary to support full and complete accounting of OST's management of tribal and individual Indian accounts. The major obstacle that impeded the "Past Reconciliation Project" was the lack of source documents. OTFM has already researched available private sector document imaging technologies. This research and the FY 1997 funding would be the basis for implementation of a document imaging system for OTFM. This proposed improvement will have to be eliminated.

Technical Assistance for Tribal Withdrawals (-\$150,000).—Funds were requested to support the provision in Title II of the American Indian Trust Fund Management Reform Act of 1994. Title II authorizes tribal withdrawal of trust funds based upon approved plans. The requested funds were to support activities which would enable OST to provide general advisory assistance to many tribes. The funds would be used to obtain a contractor who would perform background investigations of money managers at a tribe's request. This proposed improvement will have to be eliminated.

Strategic Plan Implementation (-\$13,561,000).—This proposed initiative will have to be eliminated. Funds requested in 1997 would have been used to begin to fix IIM management systems deficiencies. Until these systems are fixed the Department will have difficulty meeting its statutory and fiduciary obligations to individual Indians and tribes and over 300,000 individual Indians and tribes may be adversely affected.

Litigation Support Costs: The funding level proposed by the House puts OST in a very precarious position with regard to its ability to absorb unforeseen costs. One possible cost not budgeted for relates to litigation support costs. The Department is currently faced with one case that will cost between \$500,000 to \$2,000,000 in 1996 and substantially more in 1997. If OST is ordered to fund substantial litigation support costs, at the House funding level all recent improvements to the Departments trust fund management functions would be dismantled through reductions in force and contract cancellations.

Preferred Action: Funding should be provided in the FY 1997 Interior Appropriation Act at the level indicated in the President's request. A supplemental appropriation

tion is not an appropriate vehicle for the funds requested. Supplemental budget requests are generally only considered for unforeseen contingencies; e.g., when an emergency situation arises that requires unforeseen outlays for the preservation of life or property.

Program and/or Policy Reasons for Opposition: The House action is inconsistent with the priorities set forth by the President, the Secretary of the Interior, and the Congress to provide for more effective management of trust resources and to implement necessary changes and reforms in the policies, practices, procedures and systems pertaining to trust responsibilities to Indian tribes and individual Indians.

DEPARTMENT OF THE INTERIOR

Fiscal Year 1997 Interior Appropriations Bill; Effect of House Action

Bureau/Office: Office of the Special Trustee for American Indians

Appropriation: Federal Trust Programs, 14X0120

Activity/Subactivity: Executive Direction

Project/Budget Element: N/A

(Dollars in thousands)

Item	Fiscal year 1996 en- acted	Fiscal year 1997		
		President's request	House level	House change (+/-) from President's re- quest
Executive direction	776	1,550	776	- 774

House Action: Basically the House took the FY 1996 enacted budget authority level and disallowed any proposed increases.

House Report Statement: "Within funds provided for executive direction, the Special Trustee should prioritize funding between staffing, the Special Trustee's Advisory Board, and the Inter-Tribal Monitoring Association (ITMA)."

Reference: Page 54 of the Subcommittee Report, House Report 104-

Effect of House action

Facts, Circumstances and Considerations: An increase of \$774,000 was requested in the President's Budget under executive direction to provide additional staff for the immediate Office of Special Trustee in Washington, DC and to fund the Special Trustee's Advisory Board. Additional staff are necessary to develop and oversee the implementation of the Special Trustee's comprehensive strategic plan. The establishment and membership of the Special Trustee's advisory board is prescribed by the American Indian Trust Fund Management Reform Act of 1994. The Board has nine members and is tasked with providing the Special Trustee with advice on all matters within the jurisdiction of the Special Trustee. At the House level, the program sub-elements included in the Executive Direction subactivity will be reduced as follows:

Program sub-element	President's budget	House level
Immediate Office	\$1,228	\$526
Advisory Board	161	161
ITMA	161	89

Effect of the Change upon the Objects, Purposes, and Programs for which it is provided: The funding level, provided by the House will prevent the Special trustee from obtaining any of the required expertise necessary to carry out the mandates of the American Indian Trust Fund Management Reform Act of 1994. The lack of adequate funding will severely limit the Special Trustee's ability to vigorously pursue the reforms required by the Act and will preclude the completion of the strategic plan in 1997. In order to comply with the Reform Act, funding for the advisory board would need to be made available by decreasing the requested funding level of the InterTribal Monitoring Association. The funding level provided by the House will compromise ITMA's ability to assist tribes in reviewing their reconciliation reports and analyzing possible settlement proposals.

Preferred Action: Funding should be provided at the level indicated in the President's request.

Program and/or Policy Reasons for Opposition: The House action is inconsistent with the priorities set forth by the President, the Secretary of the Interior, and the Congress to provide for more effective management of trust resources and to implement necessary changes and reforms in the policies, practices, procedures and systems pertaining to trust responsibilities to Indian tribes and individual Indians.

Question 10. GAO's written testimony indicates that problems continue despite the fact that in February of this year the Secretary delegated to you line authority over the BIA's Office of Trust Funds Management and over all financial trust functions within BIA Area and Agency Offices. What steps are you taking to resolve the problems of improper BIA field office trust financial management practices? In these efforts, have you had the full cooperation of the Assistant Secretary for Indian Affairs and the BIA leadership at each level?

Answer. In order to improve inconsistent field accounting practices, OTFM is holding monthly conference calls with Area trust accountants to discuss improvements and issues that have arisen during this transition. OTFM also is initiating dual control procedures to address the numerous dormant accounts and accounts without valid addresses in the IIM data base. The OTFM is in the early stages of cleaning up the IIM data base in anticipation of conversion to an appropriate trust accounting system for IIM account holders. IIM consultation began in June and will continue to obtain client ideas for improvement of IIM services provided to account holders. We are also implementing performance standards at all area and agency locations to assure that the mission of the Special Trustee is carried out in all locations. We have initiated extensive trust training for all Area and agency trust employees through "Cannon Trust Schools". A benefit of the transition is that trust accountants now contact the OTFM for technical assistance, allowing the OTFM to ensure that appropriate trust practices are conveyed to all field locations.

With any change of this magnitude there are transition problems that need to be addressed and resolved. OTFM is working and managing through these transition issues with the BIA leadership. To date, OTFM has not encountered any major issues or organizational difficulties that will not be overcome in the short-term in the ordinary course.

A successful transition, however, will not resolve the major problems inherent in the government's trust management systems. These ongoing problems cannot and will not be remedied without the major reforms required by the 1994 Reform Act and as set forth in the Special Trustee's conceptual strategic plan.

Question 11. When and how does the Department propose to audit, reconcile, and certify the Individual Indian Money (IIM) accounts?

(A) What records exist which might be used in court by either the United States or the Indian tribes in defending or prosecuting claims for loss to the IIM accounts?

Answer. Arthur Andersen in Phase I of the Reconciliation Contract estimated that if the IIM could be reconciled it would cost between \$108 million and \$281 million and would be subjected to the same problems that hampered the Tribal trust funds Reconciliation Project. However, the problems would be more severe since there are over 300,000 IIM accounts versus about 2000 tribal accounts. For these reasons the Department decided to proceed with the reconciliation of Tribal funds and to defer the decision on IIM account reconciliation. To date a decision on how to proceed has not been made. Additionally, it should be noted that Congress did not appropriate funds requested by the President in FY 1996 for tribal IIM and IIM system reconciliations. The prohibition on transferring the management of trust funds to a third party prior to funds being audited, reconciled and certified was dropped from the FY 1996 Appropriations Act.

A full discussion and assessment of IIM trust management systems are contained in the report entitled "IIM Related Systems Improvement Project Report" and in the Special Trustee's Assessment and Strategic Plan, both of which have been provided to Congress. Generally, both reports point to:

1. The poor condition of the IIM data bases and the lack of integrated and adequate systems.
2. The dependence on outdated manual systems and inconsistent automated systems.
3. The lack of documentation supporting subjective management decisions.
4. Failures to address adequately large and unacceptable numbers of suspense items; accounting and reconciling errors and exceptions; accounts with no address or an incorrect address; duplicate accounts; retention of funds for minors over 18 years of age; dormant special accounts; and undistributed closed estates.
5. Poor internal controls and inconsistent policies and practices.
6. A lack of appropriate audit trails.
7. An inability to trace deposits and collections to source documents.

8. Large numbers of missing documents.

9. systems and processes which are not capable of establishing up-to-date and accurate land title records, necessary to the lease management process.

10. no consolidated accounts receivable system and master lease system to assure that all income due is collected or that it is collected in a timely manner.

11. an organizational alignment which is ineffective at times.

Trust management system deficiencies and the poor condition of the records prevent a proper, accurate and timely accounting of IIM account balances, collections, deposits, disbursements, investments and return of investments. The same conditions make the IIM accounts virtually unreconcilable, unauditable and uncertifiable at the present time. Only the implementation of the reforms contained in the Special Trustee's strategic plan will return the IIM trust management systems to a condition which can be audited, reconciled and certified.

As to what records exist which might be used in court defending or prosecuting claims for loss to IIM accounts, we are unable to give a complete answer. It is possible that nearly all the Department's existing records on trust management activities directly or indirectly involving IIM accounts might be used for such purposes.

Question 15. What assurances were lost by not completing the independent certification by Coopers & Lybrand of the reconciliation results?

Answer. The Reconciliation Project reports were issued under the professional standards applicable to Arthur Andersen, LLP. The Coopers and Lybrand Certification would not have changed the findings. The materials that were submitted by Coopers and Lybrand do not indicate any substantive differences with the Arthur Andersen work. Coopers and Lybrand did say that their work was incomplete and no conclusions can be drawn from their work due to the termination of the contract. Under the circumstances, it is the Special Trustee's view that very little was lost when the Coopers & Lybrand contract was canceled due to lack of funding to complete the certification.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS,
Washington, DC, October 23, 1996.

Hon. JOHN MCCAIN,
Chairman, Senate Committee on Indian Affairs,
Washington, DC.

DEAR MR. CHAIRMAN: Enclosed are the Department's Responses to Supplemental Questions posed by your Committee following the June 11, 1996 oversight hearing on Indian trust funds management. The questions answered in this package are numbers 2, 6, 7, 12, 13, and 14. The other questions were previously answered and submitted to you on September 26, 1996.

Sincerely,

PAUL HOMAN,
Special Trustee for American Indians.

Enclosure.

RESPONSES TO SUPPLEMENTAL QUESTIONS BY THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS TO THE SPECIAL TRUSTEE FOLLOWING THE JUNE 11, 1996 OVERSIGHT HEARING ON INDIAN TRUST FUNDS MANAGEMENT BY THE BUREAU OF INDIAN AFFAIRS AND IMPLEMENTATION OF THE AMERICAN INDIAN TRUST MANAGEMENT REFORM ACT OF 1994

Question 2. Can a fair and complete accounting be made of tribal trust funds when records are simply missing? Do you have any way to determine how many records are missing?

Answer. As the Secretary's Report indicates, the methodology used to reconcile the Tribal trust fund accounts consisted of agreed-upon procedures applied to specific elements, accounts of items of a financial statement. The performance of the work and the reporting of the findings were governed by the Statement of Auditing Standards 35 issued by the Auditing Standards Board, American Institute of Certified Public Accountants. The work performed, however, is not an audit as defined by the American Institute of Certified Public Accountants and is not a complete accounting because all the necessary financial records required to perform an audit could not be located. Consequently, the conclusions that can be drawn from the results can only be related to the records reviewed and cannot be applied to any unreconciled transaction. The specific procedures applied by Arthur Andersen LLP are described in its "Agreed-Upon Procedures and Findings Report of Independent Public Accountants" dated December 31, 1995. That report and a copy of a "sample" report submitted to each account holder which demonstrates the report format, de-

tailed description of the reconciliation methodology and the terminology used were attachments to the Secretary's Report.

Information on the extent of missing records is dependent on the level of completion of the reconciliation tasks. Due to time and cost constraints not all planned reconciliation tasks were completed or commenced. The following summarizes what is known about the availability of records for the major reconciliation tasks.

Basic Reconciliation (Non-Investment Transactions).—The Basic Reconciliation was substantially completed. As reported in the reconciliation results, records were not located to support 32,901 (13% of total transactions) of general ledger transactions. In addition, the following chart depicts reconciled disbursement transactions and the level of supporting documentation. It may be that additional documents could be found to support the general ledger entries. However, additional searching was precluded by the time and funding constraints imposed on the reconciliation.

It should also be noted that no substantial efforts have occurred to date to locate supporting documentation for roll-forward adjustments; i.e., variances between monthly beginning and ending general ledger balances. Therefore, the level of missing documentation is not known.

Investment Analysis.—A yield analysis approach was used to test investment income as opposed to the detailed verification of general ledger transactions to source documentation employed for non-investment transactions. The yield analysis approach was adopted as a more effective methodology to identify errors in investment transactions. The yield analysis procedures were only applied to Fiscal years 1978 through 1992 as general ledger income/cost codes needed to determine whether a transaction is interest related were not available for years prior to Fiscal Year 1978. For the years tested, the Bureau was able to provide the contractor with documentation necessary to explain variances outside the tolerable range of variation. The level of missing source documentation to support investment transactions is not known.

Fill the Gap.—Because of time constraints, the Bureau suspended work designed to verify that financial transactions posted to the accounting records are in agreement with the originating lease or sale agreements, permits, or contract terms (known as "fill the gap"). Therefore, the level of missing documentation is now known. For example, originally, all surface leases generating greater than \$5,000 annually were being tested (estimated to cover 6,446 surface leases). Because of time constraints, only 692 surface leases were examined by the contractor.

MoneyMax to Finance.—Of a total variance of \$11,013,183 between the Bureau's Finance System (General Ledger) balance and the Bureau's Money Max System (Investment Subsidiary Ledger) balance, the Bureau could not locate supporting documents or determine the variances to be immaterial for \$3,613 of the variance.

Treasury to Finance.—The records are not available to perform this reconciliation task prior to Fiscal Year 1987. The reconciliation reports provided to tribes in January 1996 included the results of this task for Fiscal Year 1992. Subsequently, the Bureau has completed the task for Fiscal year 1990 and 1991 and has sent these results out as a supplement to the January 1996 report. For 1992, there was a total adjusted net variance between the Bureau's General Ledger and the U.S. Treasury System of \$12,967,421. Of this amount, the Bureau could not locate support supporting documentation for \$7,416 of the transactions.

Integrated Resource Management (IRMS) to Finance System Reconciliation.—Because funding was not provided for this planned reconciliation task, the level of missing documentation to support this task is not known.

Tribal IIM.—Because it was determined under the five-tribe pilot that it was not feasible to efficiently isolate tribal HM transactions from individual Indian transactions, the level of supporting documentation to support the task is not known.

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, TRIBAL TRUST FUNDS RECONCILIATION PROJECT AGREED-UPON PROCEDURES AND FINDINGS REPORT, FOR ALL TRIBES COMBINED JULY 1, 1972 THROUGH SEPTEMBER 30, 1992

SUMMARY OF BASIC RECONCILIATION DISBURSEMENT TRANSACTION RESULTS

At the request of the Bureau, codes were assigned to reconciled disbursement transactions indicating the level of supporting documentation. All transactions with an alpha code (disbursement code) assigned are reconciled transactions. An unreconciled transaction indicates that we were not provided with all documents necessary to verify (i.e., trace and agree) the transaction to the general ledger.

Disbursement Code(s)	Transactions	Amount (in dollars)	Percent
C	10,584	(1,925,117,469.45)	29
L	10,412	(2,009,165,384.64)	30
G	1,106	(326,291,548.94)	5
GL	2,188	(635,097,709.15)	9
JL	1,370	(669,242,262.62)	10
JLZ	737	(261,728,689.71)	4
Other	9,203	(208,182,893.89)	3
Total Reconciled	35,600	(6,034,825,958.40)	90
Unreconciled	10,058	(661,481,086.59)	10
Total Disbursements	45,658	(6,696,307,044.99)	100

Disbursement Reconciliation Code Legend:

C—The complete disbursement voucher package was reconciled.

G—Transaction did not have a Treasury stamp to indicate the SF1166 cleared Treasury

J—Document contained insufficient accounting information (i.e., appropriation numbers were not on documentation). Tribal identification and reference tables were used to verify posting.

L—The disbursement was to the Tribe in care of Superintendent or third party (Bank) and did not have both Tribal and other governmental signed authorization.

Z—Additional third party documents were provided that support the disbursement transaction.

Other—Represents other reconciliation code combinations.

Question 6. Is it true that the BIA has no accounts receivable system and has no centralized custodial system for the management of securities in the trust fund portfolio? And if so, can the BIA effectively manage the trust funds without these systems?

(A) How long would it take to put effective systems in place and at what cost?

Answer. The BIA has numerous accounts receivable systems, but they are not integrated, are not in a condition to be audited and are not consolidated. The Reconciliation Project confirmed what the GAO calls the lack of a known universe of transactions and leases. The BIA has no master lease system, nor does it have a consolidated accounts receivable (billing) system. Without these systems, it is not possible to know how many leases or contracts the BIA manages, nor what the total collections are supposed to be, nor whether all documents necessary to verify (i.e. trace and agree) transactions to the general ledger exist. In my view, the BIA cannot effectively manage the trust management systems without these critical systems.

The Office of Trust Funds Management has no centralized custodial system for the management of securities in the trust fund portfolios. In 1996, OTFM will contract for centralized custodial services. This will allow for the timely settlement of trades, timely collection of funds to enable immediate investment, and automated reconciliation of a large number of diverse investment products. Centralized services replace the numerous custodians used for the safekeeping of investment securities and certificates of deposit, including the Federal Reserve Bank of New York, several brokerage firms, and many commercial banks.

Centralized custodial services would improve efficiency, and help prevent losses by ensuring maturing securities are promptly reinvested. The centralized custodial services contract is estimated at \$400,000 annually.

The cost of the accounts receivable system is included in the strategic plan which in the aggregate will total about \$100 million over a three year period. Implementation of the accounts receivable system by itself without the other elements which are integral to the plan would not be an effective or efficient use of resources.

Question 7. I note that your strategic planning concept paper calls for \$147 million to be spent on improvements. Of these improvements, which are the most critical and what is the minimum level of funding needed to address them?

(A) Please identify any amounts within the existing budget for the Office of Trust Funds Management which could be re-directed to fund these improvements.

Answer. The Special Trustee's conceptual strategic plan addresses defects in the core trust management systems the government uses to manage Indian monies. Current policies, procedures, and systems make it difficult for the government to fully meet the fiduciary accounting, and reporting standards required by the American Indian Trust Management Reform Act of 1994. The conceptual strategic plan identifies nine initiatives designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. What is needed first is a complete overhaul of the four basic trust management systems:

1. Trust resource/asset management delivery system.

2. Accounts receivable data and billing system that uses lease-contract and land ownership information.

3. Trust, depository, payments and delivery system for IIM accounts.

4. Land records and title recordation and certification system.

Along with the overhaul of these core systems must come improvements to the general ledger system, record keeping and archiving, risk management, the technology center and organizational structure.

Implementation of the strategic plan is estimated at about \$100 million over three years and \$147 million over five years. These costs will continue to be refined in the implementation study, which will be done with the funding requested in 1997. It is clear, however, that the \$100–147 million estimate is a minimum.

The problems in the trust management systems are longstanding ones. The problems stem principally from allowing the trust management systems, record keeping systems and risk management systems to deteriorate over a twenty to thirty year period. For many of those years, the trust programs were understaffed and underfunded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudent best practices taking place in the private sector trust industry. This gap continues today and will continue to increase until the reforms outlined in the strategic plan are funded and implemented. That is why they should be funded and implemented immediately, regardless of if and when the comprehensive strategic plan called for in the Reform Act of 1994 is completed and improved.

Improvements in all four core management systems are integral to the plan. Addressing any one will not solve the problem. However, initial funding will be spent toward improving the IIM accounting and trust systems.

OST's goal is to fix the IIM management systems as a first priority because they are in the worst condition of any of the Department's trust management systems and adversely affect the most individuals—over 300,000 individual account holders. Furthermore, independent of and regardless of if and when the strategic plan is approved, the IIM management systems' deficiencies can and should be addressed as soon as is practical since they are in the most urgent need of repair and can be fixed within one year after funding is secured. The improvements in the IIM systems will be done in such a way as to assure that they can be integrated with other elements of the strategic plan when and if approved.

The full cost of the IIM management systems improvements has been extracted from the strategic plan and amounts to \$22.3 million. This amount includes the full costs to upgrade 824 existing workstations and purchase 1,236 new PC computers and related systems development, data conversion, integration, implementation costs; user support and training; a file scrub and document check before conversion; rewrites of operating and legal manuals; and costs to oversee plan implementation. It also includes the annual cost of Trust Management/Individual Account System for an estimated 200,000 accounts at a monthly cost of \$2 per account. A total of \$13.6 million is requested in the President's Budget to begin implementation of these necessary improvements to the IIM accounting and trust systems.

After funding of the full amount of IIM management systems improvements is completed, additional funding would be invested in funding the other elements of the strategic plan, including, notably, the trust resource management systems improvements; the installation of an accounts receivable (billing) system; improvements to the land records and ownership systems; improved record keeping and the like.

There are no amounts within the existing budget for the Office of Trust Funds Management which could be re-directed to fund these improvements. The Office of Special Trustee will be pleased to share the results of the implementation study with the Committee upon completion.

Question 12. Why were more than 100 changes made to narrow the scope of the Arthur Andersen reconciliation effort from the time it began to the time it was concluded?

(A) Would you please provide the Committee with a complete list of all the issues that led to these changes, along with a description of the subject matter and an explanation of how each issue arose and how it was resolved?

Answer. Modification Nine was the last major substantive change to the Arthur Andersen contract in terms of procedures to be performed. There were parts of Modification Nine that were not performed because Congress did not fund or fully fund and because of the time frame by which the reports had to be issued. Other modifications were made that changed the funding amounts but did not change the scope of work of Modification Nine. The Issue Papers by definition did not change the scope of work that had been established with the contract. If an Issue Paper did change the scope of work then a Modification would have been issued. The use

of Issue Papers was started in Phase I of the Reconciliation Project and the practice was carried forward through Modification Nine.

The Reconciliation Project covered a twenty year period. This was a dynamic system that changed as statutes, policies and procedures and forms used by DOI and BIA changed. In addition, the General Ledger system used by the BIA was also a dynamic system that changed. As these changes occurred, clarifications to Arthur Andersen were needed on the impact of changes that occurred, what statutes were in effect, and what policies were in effect during what time frames. The Issue Papers were used to clarify these changes. They also provided information to Arthur Andersen on what could or could not be accomplished within the contract. For example, Yield Analysis could not be done prior to 1978 because the BIA General Ledger system did not separate interest on a consistent basis. GAO was given copies of the Issue Papers as they were approved. We are not aware of any Issue Paper which GAO opposed in writing. We are providing the Committee with a complete set of the Issue Papers with this set of questions and answers. The Issue Papers contain a description of the subject matter and an explanation of how each issue arose and how it was resolved.

Question 13. Was any reconciliation work performed on the funds held by the United States Treasury in "suspense" or "hold" accounts?

(A) If your answer is yes, what was the nature of this work, what were the findings, and why were they not included in your May 31, 1996 report?

(B) If your answer is no, why was this work not performed?

Answer. We are uncertain as to the meaning of this question as the BIA maintains numerous accounts with the U.S. Treasury. We would appreciate clarification of this question.

Question 14. The Committee has received reports that the BIA and Arthur Andersen have said an Indian tribe must pay hourly fees to Arthur Andersen if the tribe seeks an explanation of the conclusions and an examination of the records made by Arthur Andersen in the reconciliation report for that tribe. Is this true?

(A) If so, how is it fair to require a tribe that has experienced some loss due to the BIA's mismanagement of its trust funds to now be told it has to pay the BIA's contractor to explain how the losses may have occurred?

Answer. After the initial Reconciliation Reports were forwarded to the tribes in January, a national meeting, to which all account holders were invited, was held in Albuquerque, New Mexico, at government expense, with the government also paying travel expenses for two representatives from each tribe attending. The BIA and Arthur Andersen are now conducting regional meetings with the tribes to go over the materials that they received as a result of the Reconciliation Project. In these meetings, the reports and the results are explained and questions are answered. One-on-one training is also provided on the use of the CD that accompanied the materials and the electronic images on the CD's. These images are the reconciled documents from the Basic Reconciliation work and related Arthur Andersen work papers for that portion of the work. All this is provided at no expense to the tribes. In addition, the government is paying for travel expenses for one person from each tribe to attend the meetings.

However, due to the fact that the Department does not have available funding, if a tribe wants access to the work papers other than those on the CD disk, the tribe will have to pay for travel to Albuquerque and pay for Arthur Andersen's time for on-site monitoring of the work papers and the time Arthur Andersen spends in segregating the work papers for the tribe's review. Segregation time is required since individual tribes should not have access to accounts of other tribes. Monitoring is required to assure that the work papers remain intact.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE ASSISTANT ATTORNEY GENERAL,
Washington, DC, October 9, 1996.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your letter to Deputy Assistant Attorney General James Simon posing questions on Indian trust funds and the implementation of the Indian Trust Fund Management Act of 1994. Attached please find our responses to your questions. We apologize for the delay in responding.

Please contact us if we can be of further assistance. The Office of Management and Budget has advised the Department that it has no objection to the presentation of these responses from the standpoint of the Administration's program.

Sincerely,

ANN M. HARKINS

(For Andrew Fois, Assistant Attorney General).

Enclosure.

Question 1. Does the Justice Department believe the reconciliation report on the \$2.4 billion provides an adequate basis from which either the courts or the Congress could reasonably determine the fair value of tribal claims based on loss or mismanagement?

(A) If your answer is yes, what settlement process does the Department propose in order to avoid lengthy and costly litigation?

(B) If your answer is no, what added information would need to be developed to settle the claims and avoid lengthy and costly litigation?

Answer. We believe that, for substantially the reasons set out in the July 15, 1996 letter to you from Edward B. Cohen, Deputy Solicitor of the U.S. Department of the Interior, the tribal trust fund reconciliation does not provide an adequate basis or process from which the courts or Congress could determine the fair value of tribal claims based on allegations of loss or mismanagement.

We also agree that it is important to develop a claims settlement process that will be fair and efficient and that will avoid lengthy and costly litigation. As Mr. Cohen stated, the Department of the Interior is currently in the process of meeting with the affected tribes and has asked them whether they accept or dispute the balances in their accounts as determined by the reconciliation process. Once the tribes' responses have been received, the Departments of Justice and of the Interior will be in a better position to evaluate how disputes should be resolved.

Question 2. What is the Justice Department's view of GAO's settlement process proposal?

Answer. We agree with GAO that an alternative means of fairly and efficiently resolving disputed account balances is needed so as to avoid or minimize the expense and delay of litigation. However, we share the concerns expressed in Deputy Solicitor Cohen's letter that the specifics of the settlement process proposed by GAO may not be a workable alternative to litigation.

Question 3. Some tribal representatives have informed the Committee they believe the Interior Department and the Department of the Treasury have destroyed records relating to the Individual Indian Money (IIM) accounts. Please respond to this allegation, and what assurances can you give the Committee that all existing Interior and Treasury records relating to the IIM accounts are being preserved?

We defer to Deputy Solicitor Cohen's response with respect to the records of the Department of the Interior.

With respect to Department of the Treasury, attached is a copy of a July 15, 1996 letter from Steven D. Laughton, Senior Attorney for Programs, Office of Chief Counsel, Department of the Treasury, explaining the Treasury Department's record retention policies, and the steps that Treasury will take to preserve records relating to IIM accounts.

DEPARTMENT OF THE TREASURY,
FINANCIAL MANAGEMENT SERVICE,
Washington, DC, July 15, 1996.

MARK HAAG, Esquire,
Department of Justice, Environment and Natural Resources Division, Policy, Legislation, and Special Litigation, Washington, DC.

DEAR MR. HAAG: This letter is to follow-up on your June 27, 1996 transmittal of copies of letters from Senator McCain, Chairman of the Senate Committee on Indian Affairs, to the Departments of Justice and Interior. The Chairman requested assurances "that all existing Interior and Treasury records relating to the IIM [Individual Indian Money] accounts are being preserved." The Chairman also requested a response to allegations made by tribal representatives that both Treasury and Interior have destroyed records related to "IIM accounts."

Because there is only one IIM account on the books of the Treasury, we believe that the Chairman's references to "IIM accounts" pertain to the Bureau of Indian Affairs's (BIA) internal subaccounting of monies owed to each individual Indian out of the IIM account. Treasury's Financial Management Services (FMS) does not maintain any such subaccount information, and we are thus of the view that the Chairman's inquiry does not apply to FMS. To assist you in better understanding

FMS' role and responsibility with regard to the IIM account, we offer the following information.

I. IIM ACCOUNTING AND INVESTING

FMS, as the Government's financial manager, manages the Government's central accounting and reporting systems that track the Government's monetary assets and liabilities. FMS tracks some 7,500 separate accounts based on approximately 1,200 Federal agencies' monthly submission of summary statements of transactions. FMS also is responsible for the investment of the Government's multibillion-dollar trust funds.

FMS' duties with regard to the IIM account are thus limited to performing certain accounting and investment functions. Specifically, BIA submits monthly a summary statement of transactions for the IIM account (14X6039) which reflects the net receipts and disbursements out of that account. Attachment 1. FMS then enters the data into the FMS centralized accounting system database (STAR). This data is retained for 7 years. Currently, STAR retains such information for 1990 through 1996. The data for 1989 is retained at a Federal Records Center. However, as noted above, we do not believe that the Chairman's request pertains to the summary data received from BIA. Nevertheless, FMS will henceforth retain such summary data beyond its current record retention period.

With regard to investing, FMS statutorily is required to invest funds in the IIM account upon the request of the Secretary of the Interior. 25 U.S.C. § 161a(b). Operationally, FMS immediately invests IIM monies upon receipt of oral instructions from BIA, which follows-up in writing with an "Investment Confirmation Letter." Attachment 2. FMS has not destroyed any IIM account investment records. All such records are maintained either within FMS or at a Federal Records Center.

II. IIM PAYMENT PROCESSING

A. Check issuance

The issuance of payments also is a central financial operation of FMS, which disburses approximately 850 million payments annually, representing an outlay in excess of \$1 trillion. Generally, FMS disburses for Federal agencies upon receipt of a voucher certifying payment. See 31 U.S.C. §§ 3321 and 3325. However, FMS does not disburse IIM payments for BIA since BIA serves as a non-Treasury disbursing officer (NTDO). Consequently, as an NTDO, BIA makes all IIM payments, as well as other types of payments.

FMS maintains a Check Payment and Reconciliation (CP&R) system into which FMS enters all Treasury check issue data received from NTDOs as well as payment information received from the Federal Reserve Banks when a Treasury check is presented for payment. Information in CP&R can be accessed only by means of check serial and symbol number. Each NTDO has its own symbol, and FMS can thus identify all BIA payments. However, FMS cannot determine whether a specific BIA payment was an IIM or some other type of payment.

B. Check cancellation

If a Treasury check issued on or after October 1, 1989 is not negotiated to a financial institution within 12 months after the date of issuance, FMS' CP&R system cancels the check and generates a cancellation report which is sent to the NTDO. See 31 U.S.C. §§ 3328 and 3334; 31 C.F.R. §§ 240.3 and 240.4. FMS also will credit the NTDO's budget clearing account with the proceeds of the cancelled Treasury check. The NTDO then is responsible for ensuring that its appropriate agency account is credited. For example, if FMS cancels a BIA payment, FMS will report the cancellation and remit the proceeds to the BIA budget clearing account. BIA then is responsible for determining whether the proceeds are to be credited to the IIM or some other BIA account. BIA accomplishes this through its monthly submission of summary statement of transactions.

As an aside, the mere fact that a Treasury check is cancelled does not affect the NTDO's obligation to the payee. See 31 U.S.C. §§ 3328(a)(3) and 3334(c). Treasury regulations provide that upon receipt of a claim concerning the cancellation of a Treasury check, the NTDO may make a new payment. 31 C.F.R. § 245.5.

FMS policy is to retain all information in CP&R for 7 years. Since the current CP&R system went on-line in November 1986, FMS can access all CP&R information from 1988 to the present. However, as noted above, we do not believe that the Chairman's request pertains to this data. Nevertheless, FMS intends to retain for the foreseeable future all such CP&R information.

I hope this information is helpful. If you have any questions, please do not hesitate to contact me at (202) 874-7036.

Sincerely,

STEVEN D. LAUGHTON,
Senior Attorney for Programs, Office of Chief Counsel.

Enclosures.



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